# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**RSA No.562 of 2005**

**Decided on: October 12, 2006**

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**Ram Parkash** **.....Appellant.**

***VERSUS***

**Ramesh Chand and others** **.....Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

***Whether approved for reporting?***[1]

**For the Appellant** : **Mr. Sanjeev Kuthiala, Advocate.**

**For the respondent** : **Mr. Ramakant Sharma, Advocate, for respondents No.1 and 3 to 8.**

**None for other respondents.**

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**Surjit Singh, Judge (Oral)**

Heard and gone through the record.

***2.*** Suit was filed by respondent No.1 Ramesh Chand, hereinafter called plaintiff, seeking a declaration that he was joint owner in possession of certain property, including the structures standing thereon, with the present appeal Ram Parkash, who was impleaded as defendant No.1, and some other persons, namely respondents No.2 to 10, who were impleaded as co-defendants with appellant Ram Parkash. Injunction was also sought restraining the appellant and respondent No.2 Ram Nath from dispossessing him from the joint possession of the suit property.

***3.*** The appellant and respondent Ram Nath, who were impleaded as contesting defendants, denied the claim of the plaintiff. They alleged that they had constructed a house on a portion of the

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***Whether the reporters of the local papers may be allowed to see the judgment?***

joint property, the area of which was 14 biswas and the plaintiff had nothing to do with that house. Certain preliminary objections were also raised.

***4.*** Trial Court framed various issues based on the pleadings of the parties and concluded that the parties were joint owners of the suit property, including the structures standing thereon, and that the contesting defendants, including the present appellant, had threatened to oust the plaintiff from the enjoyment of the suit property as co-owner. Consequently, the suit was decreed. Plaintiff was declared to be a co-sharer with the defendants to the extent as shown in the latest *Jamabandi* and the appellant and respondent Ram Nath were restrained from dispossessing the plaintiff till the partition of the property in accordance with law. Appeal was filed against the said judgment by the present appellant. The first Appellate Court has affirmed the finding and decree of the trial Court and dismissed the appeal

***5.*** Learned counsel for the appellant has stated that earlier also plaintiff had filed a suit and in that suit he did not claim that there existed any structures on the suit property and, therefore, the two Courts below were not justified in returning the finding that the structures standing on the suit property were joint of the parties. The contention is without merit. The earlier suit was for injunction restraining the appellant and respondent Ram Nath from raising construction on a portion of the suit property, which they had threatened to raise. It was nowhere averred in that case by the plaintiff that there existed no structure on the suit property. Therefore, the contention that in the earlier suit the plaintiff had

conceded that there was no structure on the suit property cannot be accepted.

***6.*** Another submission made by the learned counsel for the appellant is that one of the respondents had died during the pendency of the appeal before the District Judge and her Legal Representatives have not been brought on record. According to him, Jayanti, who was respondent No.10 in the appeal, had expired when the matter was pending in the Court of District Judge. Admittedly, said Jayanti was a proforma-respondent. No relief had been claimed against her by the plaintiff. She had not filed any written statement in the trial Court contesting the claim of the plaintiff. Also, she had not filed any appeal against the decree passed by the trial Court in favour of plaintiff Ramesh Chand. She being not a necessary party and no decree having been passed by the first Appellate Court against her, the judgment of the first Appellate Court cannot be said to be a nullity.

***7.*** Since no substantial question of law arises, the appeal is dismissed.

**CMP No.966/2005**

The application is dismissed. Interim order, dated 2.11.2005, stands vacated.

**CMP No.968/2005**

Infructuous.

**October 12, 2006**(sd) **( Surjit Singh ), J.**